

APPENDIX D – CEO JOB DESCRIPTION AND REPORTS

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(December, 2001)

CHAPTER 29 – CODE ENFORCEMENT DEPARTMENT

Article 1. CODE ENFORCEMENT OFFICER

Section 1. CREATION. In accordance with Article 5, Section 3(a) of City charter, there is hereby created the office of Code Enforcement Officer.

Section 102. ASSIGNMENT. In accordance with Article 5, Section 3(b) of the City Charter, the duties of the Inspector of Buildings, Inspector of Electrical Wiring and Inspector of Plumbing are hereby assigned to the code Enforcement Officer.

Section 103. APPOINTMENT. The Code Enforcement Officer shall be appointed by the city Manager, subject to the confirmation of the City Council, to serve until his successor is appointed and qualified.

Section 104. DUTIES. The Code Enforcement Officer shall:

- 104.1** Perform the duties of the Inspector of Buildings as required by the Ordinances of the city and laws of the State of Maine.
- 104.2** Perform the duties of the Inspector of Electrical Wiring as required by the Ordinances of the city and laws of the State of Maine.
- 104.3** Perform the duties of the Inspector of Plumbing as required by the Ordinances of the City and laws of the State of Maine.
- 104.4** Publish legal notices on behalf of the Zoning Board of Appeals.
- 104.5** Attend meetings of the Zoning Board of Appeals and keep minutes of its proceedings.
- 104.6** Enforce the Zoning Code of the City.
- 104.7** Inspect promptly the premises when application is made for a license or permit for some activity thereon which requires certification by him and either deliver promptly to the city Clerk a certificate approving such license or permit, or promptly advise the City Clerk of his refusal to so certify.
- 104.8** Perform all such duties as required by the City Charter, the ordinances of the City or Order of the City Council.

An Ordinance to Establish the
Office of Deputy Code Enforcement
Officer

There is hereby established the office of deputy code enforcement officer pursuant to 30-A M.R.S.A. § 3001. The deputy code enforcement officer shall be appointed by (the town manager?) (The CEO?) The deputy's term shall be (specific number of years?) (indefinite?) (coterminous with that of the regular CEO?). The deputy shall continue to serve until a successor is appointed and qualified. (The town manager?) (The CEO?) may remove the deputy for cause after notice and hearing.

The duties of the deputy code enforcement officer shall be to assist the regular code enforcement officer in the performance of his or her duties as directed by the code enforcement officer. In the event that the code enforcement officer is absent or otherwise unavailable, the deputy is authorized to act on his or her behalf.

AGREEMENT FOR A JOINT CODE ENFORCEMENT OFFICER

WHEREAS the parties hereinafter named have enacted ordinances and regulations for the control of structures and land use within their several jurisdictions; and

WHEREAS the requirement of these ordinances and regulations include the necessity or the desirability of appointing a suitable person for their enforcement; and

WHEREAS the parties to this agreement have determined that it will be a more efficient use of their powers and to their mutual advantage to appoint one person to serve all of the parties in the capacity of Code Enforcement Officer; and

WHEREAS the parties to this agreement are authorized to contract pursuant to the Maine Interlocal Cooperation Act, 30A M.R.S.A. §2201-2207

NOW, THEREFORE, the municipalities of _____
and _____, for and in consideration of the mutual promises
and agreements hereinafter stated and the performance thereof do hereby promise
and agree as follows:

PART 1. PURPOSE

1.1. Purpose.

The purpose of this agreement is to provide for the joint appointment of a Code Enforcement Officer to enforce and assist in the administration of the several ordinances and regulations governing land use and structures which have heretofore or may hereinafter be enacted by the parties.

1.2. Obligation to Accept Services. (Optional)

No code enforcement function which would normally be performed by the Code Enforcement Officer shall be transferred to another municipal official during the effective term of this agreement.

PART 2. DEFINITIONS. (Optional)

PART 3. ADMINISTRATION.

3.1 Joint Board.

There is hereby created a Joint Code Enforcement Officer Board, hereinafter called the "Joint Board", an administrative entity which shall act as the agent of the parties pursuant to this agreement. Members of the Joint Board shall be municipal officers and shall be appointed by the municipal officers of the parties. The municipality of _____ shall have member(s); the municipality of _____ shall have _____ member(s), (etc.). All terms shall commence on _____ and expire on _____. Membership shall be coterminous with municipal office or for a term of _____ years, which ever occurs first, except that initial appointments shall be in accordance with the following:

The municipality of _____ shall appoints one member for a _____ year term, one member for a _____ year term, (etc.).

The municipality of _____ shall appoint one member for a _____ year term, one member for a _____ year term, (etc.).

3.2. Meetings.

(a) The Joint Board shall elect a chairperson and may elect such other officers as it deems necessary. Terms of all officers shall be for one year and until successors shall have been elected.

(b) Notice of the time and place of all meetings shall be communicated to all members at least _____ days prior to any meeting.

(c) A quorum shall consist of at least _____ member(s) from _____ of the parties.

3.3. Powers.

The Joint Board shall have the power to employ a Code Enforcement Officer and to terminate such employment, and such other powers as are incidental thereto, to include without limitations the power

(a) to establish hiring procedures, job descriptions, rules governing conduct, to fix compensation, benefits and travel expenses, and to provide supervision for the Code Enforcement Officer employed;

(b) to authorize the Code Enforcement Officer to engage such assistants as he may require;

(c) to establish by-laws for the conduct of its business.

PART 4. FINANCE

4.1. Appointment.

All fees and fines shall be collected in accordance with the schedule incorporated herein in Appendix A. Costs shall be paid to the maximum extent possible with such fees and fines. For the purpose of meeting any deficits which may arise, each party agrees to pay not less than \$_____ per capita for each year such party remains party to this agreement; provided, such amounts may be reduced proportionately in any year that total collections of fees and fines permits; provided further, nothing in this agreement shall be construed to prevent a party from voluntarily contributing more than the amount of its required payments. Subject to the preceding provisions, the Joint Board may request amounts in excess of each party's required payments, to be determined as follows:

- (a) The amount of fees collected or due in the preceding fiscal year in each municipality shall be divided by the total amount of fees collected or due in the preceding fiscal year in all of the party municipalities. The resulting percentage figures shall be multiplied by the amount of any deficit to determine each party's recommended share of costs.

4.2. In-Kind Contributions.

The Employing Municipality shall receive credit towards its share of costs for the value of in-kind contributions made by it. Credit shall not exceed \$_____ for any one fiscal year, and shall be limited to administrative overhead, office space, telephone and other communications, and actual cost of supplies, materials, vehicles and equipment.

4.3. Financial Procedures.

- (a) The Joint board shall appoint a Treasurer who may be an official of the Employing Municipality. The Treasurer shall have the power and the duty to establish a "Joint Code Enforcement Officer Account", to disburse funds on behalf of the Joint Board, to keep complete and accurate records of all financial transactions, and to prepare an annual report of such transactions for submission to the Joint Board.
- (b) The fiscal year shall be from _____ to _____. On or prior to _____ of each year the Joint Board shall adopt a budget, negotiate in-kind contribution credits and determine the amount of deficit payments to be recommended to the parties. It shall transmit such information forthwith to the parties, along with the annual report of the Treasurer and of the Code Enforcement Officer.

- (c) The Code Enforcement Officer shall make reasonable efforts to collect all fees and shall transfer to the Treasurer all fees except those collected pursuant of 30A MRSA §4215-4221 and the Maine State Plumbing code. The several Treasurers of the parties shall transfer to the Treasurer deficit payments appropriated, fees collected pursuant to the Maine State Plumbing Code and any fines and other revenues collected pursuant to an ordinance, regulation or other law which is administered by the Code Enforcement Officer. Any funds remaining in the Joint Code Enforcement Officer Account at the end of each fiscal year shall be carried forward in such account for the following year.
- (d) The Joint Board shall engage a qualified public accountant to conduct an annual audit of the Joint Code Enforcement Officer Account. The audit shall be conducted on the basis of auditing standards and procedures prescribed for municipalities by the Sate Auditor.

4.4. Starting fund.

The municipality of _____ shall transfer \$_____ to the Treasurer within _____ days subsequent to the first meeting of the Joint Board, said amount to be repaid within one year with interest of _____% per annum.

PART 5. PROPERTY

5.1 Property.

The employing municipality shall provide any vehicles, equipment, or other property needed by the Code Enforcement Officer, subject to approval by the Joint Board. The employing municipality shall retain any such property upon termination of this agreement. Any funds remaining in the Joint Code Enforcement Officer Account shall be divided upon termination of this agreement in accordance with the required payment formula established in Section 4.1. hereinabove.

PART 6. PERSONNEL.

6.1. Employing Municipality.

For administrative purposes, the municipality of _____ shall serve in the capacity of employer of the Code Enforcement Officer and any of his assistants. The Employing Municipality shall perform payroll and related functions; provide telephone and office

communication services during regular business hours; and provide materials, supplies, equipment, and office space. The Employing Municipality shall be solely liable to the Code Enforcement Officer or any of his assistants for any liability for compensation or indemnity for injury or sickness arising out of and in the course of their employment; provided, the other parties agree to indemnify the employing municipality for any such liability in excess of the limits of Workmen's Compensation or insurance.

6.2. Code Enforcement Officer.

Persons appointed as Code enforcement Officer shall be certified by the Maine State Planning Office pursuant to Title 30-A M.R.S.A. §4451. Written certificates of appointment shall be executed by the Joint Board and copies thereof countersigned by the appointing authority of each party and filed with the clerk of each of the parties. The Code Enforcement Office shall have the power and duty to:

- (a) Enforce all provisions of the several building and land use ordinances and regulations enacted by the parties;
- (b) see to the enforcement of all State Statutes and regulations relating to the erection, placement or alteration of structures, and the alteration of land or water bodies;
- (c) conduct inspections as frequently as may be necessary to insure compliance with municipal ordinances and regulations and state laws;
- (d) advise applicants as to whether additional approval is required by other municipal officials or state or federal agencies and the procedures necessary to obtain such approval;
- (e) assist and advise the municipal officers of the parties with the enforcement and administration of the Coastal Wetlands Act, Junk Yard Act, Dangerous Building Act, and law relating to malfunctioning domestic sewage disposal unit, 30A MRSA §3428;
- (f) act as ex-officio plumbing inspector and have all powers and perform all duties connected with that office;
- (g) review all subdivision applications for compliance with all applicable ordinances, regulations and laws, transmit such applications to the appropriate planning boards along with a written statement that the application is in compliance with applicable municipal ordinances and state laws, issue permits to applicants when authorized by the individual planning board, and see that any conditions placed

- upon permits are complied with by the applicant;
- (h) keep complete records of the transactions relating to his office;
 - (i) prepare and submit an annual report to the Joint Board of his activities indulging amount of time spent and number of applications processed in each of the party municipalities;
 - (j) have the full powers that are necessary for him to perform the requirements of this agreement and of the several building and land use ordinances of the parties;
 - (k) appoint, after authorization by the Joint Board, supervise and dismiss any assistants he may require.

PART 7. REMEDIES.

7.1. Breach. (Optional)

A party shall be deemed to be in breach of this Agreement if it fails to appropriate or make timely payment of its share of costs, or if it fails to perform or comply with any of the terms, provisions, or conditions of this agreement or of the bylaws of the Joint Board. The Joint Board shall give a party written notice of specific acts or omissions which constitute breach. The party so notified shall have _____ days to conform. If the party fails to conform within the above mentioned time period, or if the party waives the time period, then the party or the Joint Board shall have the power to submit the question of breach to the arbitration procedure established in Section 7.2. hereinbelow.

7.2. Arbitration. (Optional)

In the event the Joint Board or a party under notice of breach elects to submit a question of breach to arbitration, the following provisions shall govern:

- (a) The Joint Board and the party under notice of breach shall each select a representative and the two persons so selected shall choose a third-neutral person, and the three persons so selected shall constitute an arbitration board. If either party does not select its representative or if the two representatives fail to agree upon, select and name a third neutral person within _____ days, either party may request the American Arbitration Association to utilize its procedures for making such selection.
- (b) The arbitration board's jurisdiction shall be limited to the interpretation or application of the terms of this agreement.

- (c) As soon as possible after the selection of the neutral person, the three arbitrators shall meet with the parties or their representatives, or both, forthwith, either jointly or separately, make inquiries and investigations, hold hearings, or take such other steps as they deem appropriate. Hearings shall be informal, and rules of evidence prevailing in judicial proceedings shall not be binding.
- (d) The arbitration board shall by majority vote make written findings and shall render a decision which with the exception of fraud shall be binding upon the parties. In the event the arbitration board finds the breaching party to have made a withdrawal, the remedy shall be as provided in Section 7.3., hereinbelow.
- (e) The cost of arbitration proceedings shall be shared equally by the parties and the party under notice of breach.

7.3. Withdrawal.

Any party may withdraw from this agreement subject to the following:

- (a) Notice of intent to withdraw shall be given to the Joint Board at least _____ prior to withdrawal;
- (b) any payment due during the notice period shall be paid to the Treasurer;
- (c) upon the effective date of withdrawal the withdrawing party shall lose all rights to benefits derived of this agreement and to any funds previously contributed;
- (d) in the event the Employing Municipality withdraws, the following parties shall become the Employing Municipality in the following order;

PART 8. ADOPTION; AMENDMENT.

8.1 Duration.

This agreement shall continue for _____ years from its effective date or until fewer than _____ municipalities remain as parties, whichever occurs first.

8.2. Adoption.

This agreement shall not take effect until it has been approved by the legislative bodies of at least _____ parties, signed by a majority of the Municipal Officers thereof, approved by the Attorney General and by _____ (appropriate state agency), and filed with the clerks of the parties and with the Secretary of State. Parties shall have until _____, 20____ to approve this agreement, after which time they shall make application as new parties under Section 8.5 hereinbelow.

8.3. Review by Regional Planning Commission.

This agreement shall be submitted to the _____ Regional Planning Commission for review and comment at least thirty days prior to legislative action on this agreement by any party.

8.4. Amendment.

This agreement may be amended by following the procedures established in Section 8.2. hereinabove, except that amendment shall not be required,

- (a) to strike out the names, numbers and terms of directors and any other information written in this agreement applying to parties who fail to approve or who withdraw from this agreement;
- (b) to add new parties.

8.5. New Parties.

Municipalities may be admitted as parties to this agreement by a _____ vote of the Joint Board and upon approval by the legislative body of such party of any terms and conditions of entry which the Joint Board may require.

IN WITNESS WHEREOF, the parties have by their duty authorized officers caused this agreement to be executed this _____ day of _____, 20__

By _____	by _____
_____	_____
_____	_____
_____	_____
_____	_____

For Town of _____

For Town of _____

Approved: _____

Attorney General

(State Agency)

Regional Planning Commission

APPENDIX A. Uniform Fee and Fine Schedule.

1. Fees.

No application for a building or zoning permit to begin work for new construction, alteration, removal, demolition or other building or development operation shall be considered until the fees prescribed in this section shall have been paid to the Code Enforcement Officer or the Treasurer, nor shall an application for an amendment to a permit previously issued be considered until an additional fee shall have been paid. The payment of fees under this section shall not relieve any applicant or holder of a permit from the obligation to pay any other fees that may be prescribed by law or ordinance, including without limitation plumbing inspection, subdivision review and wetlands applications.

(a) a basic fee of \$_____ shall be paid for all applications for permits and amendments to permits;

(b) in addition to the basic fee, applicants shall pay:

\$ _____ for work the valuation of which is more than \$ _____ but less than \$_____.

\$ _____ for work the valuation of which is more than \$ _____ but less than \$_____.

(repeat)

and \$ _____ for each additional \$1,000 or fraction thereof the valuation over \$ _____

The Code Enforcement Officer shall determine valuation of projects in accordance with prevailing costs of construction and development.

2. Fines.

Any person who shall violate a provision of an ordinance or regulation pursuant to which a fee is collected by the Code Enforcement Officer or who shall fail to comply with any of the requirements thereof or who shall erect, construct, alter, remove or demolish a building, structure or improvement in violation of a permit issued under the provisions thereof, shall be guilty of a misdemeanor, punishable by a fine of not more than \$ _____dollars. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

SAMPLE JOB DESCRIPTIONS

For those reviewing or creating a job description for a Code Enforcement Officer, please remember that there is no "model" job description. Some examples are provided here. One may serve as a model for you, but don't hesitate to be creative. There may be as many different job descriptions as there are Code Enforcement Officers and **the job description should meet the needs of the community**. There are, however, some elements of the description that the Office needs in order to provide for the certification requirements of applicants. These should be common elements of any job description. These elements, if included, should also help to define the relationship between the code officer and other local officials. Experience has suggested that laying a solid foundation before this relationship develops will help to prevent uncomfortable situations down the road. What the office is looking for need not be very specific, but if specificity meets your needs, it will meet ours. The job description should:

1. Offer an introduction that generally identifies the role of the Code Enforcement Officer in the over-all function of the town administration.
2. Specify the Code Enforcement Officer's official Title or Titles.
3. **Specify Ordinances, Codes, and Laws that the Code Enforcement Officer is sworn to enforce within the municipality. Briefly, describe the ordinance and especially those ordinances that govern development. Add State Statutes that the town has specifically authorized the CEO to enforce.**

IMPORTANT: It should be made clear whether a building inspector enforces a locally adopted building code (contains construction standards), or is appointed under 25 MRSA Chapter 313 with no local building code to enforce.

4. Identify the other people and Boards with whom the Code Officer is obligated to be involved with and outline the function he or she serves with them. *Does he/she serve as staff for the planning board? What board meetings, if any, is he/she required to attend?*
5. List general and/or specific duties and responsibilities.
6. Identify the Code Enforcement Officer's authority.

Sample Job Description
(this is a sample only and should be tailored to meet municipal requirements)

CODE ENFORCEMENT OFFICER

Nature of Work

This is responsible administrative and technical work in carrying out land use, building, and plumbing permitting and inspections and securing compliance with the town's ordinances, codes, and zoning regulations. This person is the Town's authorized Building Inspector **[It should be made clear whether a building inspector enforces a locally adopted building code (contains construction standards), or is appointed under 25 MRSA Chapter 313 with no local building code to enforce]**, Plumbing Inspector, Shoreland Zoning Officer, and Land Use Regulator.

This employee is responsible for assistance to the general public regarding codes. Customer service, education and violation prevention are primary responsibilities. This individual is also responsible for issuing land use, building, plumbing, and demolition permitting; conducting land use, building, and plumbing inspections; enforcing municipal zoning ordinances, municipal building codes, the municipal floodplain management ordinance and certain specific State adopted Codes and Laws. The Town specifically authorizes this person to enforce 30-A M.R.S.A. §§ 3751-3760 (Automobile Graveyards- Junkyards), NFPA 211 (Standards for Chimneys, Fireplaces, Vents, and Solid Fuel Burning Appliances), and Maine State Internal Plumbing Rules, Chapter 238 and Maine Subsurface Waste Water Disposal Rules under Chapter 185, subchapter 3. This person maintains liaison with appropriate State and local agencies; and maintains departmental records and reports. Work is performed under the general supervision of the Town Manager with considerable independent judgment and discretion in accordance with applicable laws and ordinances. Work is reviewed through reports, discussions, and results achieved.

The code enforcement officer is appointed for an indefinite term in accordance with 30-A M.R.S.A. § 2601-A. There shall be a probationary period of six months, after which the CEO shall serve unless the municipal officers remove the CEO for cause after a hearing in which these causes are specified. There shall be an annual written job performance report signed by the Town Manager and the code enforcement officer and filed in the personnel file.

Examples of Work (Illustrative only)

1. Reviews for compliance, applications for building construction and/or renovations and issues permits or refers to appropriate boards or agencies for action.
2. Inspects buildings and developments that are under construction, alteration or repair for compliance with the shoreland zoning ordinance, floodplain management, and other land use requirements, with the municipal building code and State plumbing codes.
3. Provides information related to development as requested by banks, lawyers, realtors, developers and individuals.
4. Investigates complaints of possible code violations, including zoning, floodplain management, building, and plumbing, and initiates appropriate action, as necessary to ensure compliance.
5. Assists applicants and reviews applications for land use, building, demolition, plumbing or other development permits, calculates fees and issues permits when appropriate.
6. Assures compliance with the standards of 30-A M.R.S.A. §§ 3751-3760 within the Town.
7. Assures compliance with the standards of NFPA 211 within the Town.
8. Assures compliance with the Maine State Internal Plumbing Rules, Chapter 238 and Maine Subsurface Waste Water Disposal Rules under Chapter 185, subchapter 3.
9. Attends board of selectmen, planning board and board of appeals meetings as necessary.
10. Takes appropriate enforcement action against violations of town development and zoning regulations as provided for in these regulations.
11. Prosecutes violators when appropriate in court under Rule 80 K of the Court Rules of Civil Procedure.
12. Prepares and maintains records and reports of all Code Enforcement Office actions.
13. Performs other work as required by laws and ordinances that he/she is authorized to enforce.

Requirements of Work

Considerable knowledge of approved methods and materials used in land use development, building construction, and plumbing installations.

Considerable knowledge of local, State, and federal development regulations governing land use, building, and plumbing construction, and the ability to interpret same.

Considerable knowledge of commonly accepted zoning standards and ability to interpret same.

Ability to analyze and interpret complex construction plans and specifications.

Ability to deal with the public courteously and firmly under adverse or strained conditions.

Ability to maintain records and prepare reports.

Ability to recognize code violations and to take appropriate enforcement action.

Ability to communicate well both orally and in writing.

Desirable Experience and Training

Familiarity with zoning and environmental regulation. Considerable experience in the construction industry or as journeyman electrician or plumber, graduation from an accredited high school supplemented with two-year vocational program in building construction, structural design, supplemented by a college degree in a relevant area; or any equivalent combination of training and experience.

Necessary Special Requirements

Possess certification as required by 30-A MRSA § 4451, 30-A MRSA §§ 4201-4204, 30-A MRSA § 4453 or be able to obtain these certificates within (12) twelve months of the date of appointment.

Must possess a valid motor vehicle operator's license.

CODES ENFORCEMENT OFFICER

Nature of Work

This is responsible administrative and technical work in administration and enforcement of the Town's Shoreland Zoning Ordinance and Land Use regulations. The job includes assistance to the general public regarding codes. Customer service, education and violation prevention are primary responsibilities. This individual will provide assistance to applicants, issue permits, and conduct inspections of development projects to assure compliance with the town's ordinances. This person is the Town's authorized Shoreland Zoning Officer, and Land Use Regulator.

This employee is responsible for issuing development permits (structures and non structures), conducting building, zoning, and other land use inspections; enforcing municipal zoning ordinances and certain specific State Laws. The Town specifically authorizes this person to enforce 30-A M.R.S.A. §§ 3751-3760 (Automobile Graveyards-Junkyards). This person maintains liaison with appropriate State and local agencies; and maintains departmental records and reports. Work is performed under the general supervision of the Town Manager with considerable independent judgment and discretion in accordance with applicable laws and ordinances. Work is reviewed through reports, discussions and results achieved.

The code enforcement officer is appointed for an indefinite term in accordance with 30-A M.R.S.A. § 2601-A. There shall be a probationary period of six months, after which the CEO shall serve unless the municipal officers remove the CEO for cause after a hearing in which these causes are specified. There shall be an annual written job performance report signed by the Town Manager and the code enforcement officer and filed in the personnel file.

Examples of Work (Illustrative only)

1. Assists applicants and reviews for compliance applications for development under the Town's shoreland zoning, floodplain management and other land use ordinances, calculates fees and issues permits when appropriate or refers to appropriate boards or agencies for action.
2. Inspects buildings and developments that are under construction, alteration or repair for compliance with permit conditions, and the standards of the Town's land use ordinances.
3. Provides information related to development as requested by banks, lawyers, realtors, developers and individuals.
4. Investigates complaints of possible code violations, including zoning and floodplain management, and initiates appropriate action, as necessary to ensure compliance.
5. Attends board of selectmen, planning board and board of appeals meetings as necessary.
6. Prepares and maintains records and reports of all Code Enforcement Office actions.
7. Performs other work as required by laws and ordinances that he/she is authorized to enforce.

Requirements of Work

Considerable knowledge of approved methods and materials used in land use development

Considerable knowledge of local, State, and federal regulations governing zoning and land use development, and the ability to interpret same.

Ability to deal with the public firmly and courteously under adverse or strained conditions.

Ability to prepare reports and maintain records.

Ability to recognize codes violations and to take appropriate enforcement action.

Ability to communicate well both orally and in writing.

Desirable Experience and Training

Graduation from an accredited high school.

Considerable experience working with zoning and land use regulations. Knowledge of municipal government procedures.

Necessary Special Requirements

Possess certification as required by 30-A MRSA § 4451 or be able to obtain these certificates within (12) twelve months of the date of appointment.

Must possess a valid motor vehicle operator's license.

1. Certification required; exceptions. Beginning January 1, 1993, a municipality may not employ any individual to perform the duties of a code enforcement officer who is not certified by the office, except that:

- A. An individual other than an individual appointed as a plumbing inspector has 12 months after beginning employment to be trained and certified as provided in this section;
- B. Whether or not any extension is available under paragraph A, the office may waive this requirement for up to one year if the certification requirements cannot be met without imposing a hardship on the municipality employing the individual; and
- C. An individual may be temporarily authorized in writing by the Department of Human Services, Division of Health Engineering to be employed as a plumbing inspector for a period not to exceed 12 months.

A person employed by a municipality or municipalities as a code enforcement officer for at least 3 years prior to January 1, 1990 is deemed certified under this section and, 5 years after the effective date of this paragraph, is subject to the recertification requirements of subsection 6.

2. Penalty. Any municipality that violates this section commits a civil violation for which a forfeiture of not more than \$100 may be adjudged. Each day in violation constitutes a separate offense.

2-A. Code enforcement officer; definition and duties. As used in this subchapter, "code enforcement officer" means a person certified under this section and employed by a municipality to enforce all applicable laws and ordinances in the following areas:

- A. Shoreland zoning under Title 38, chapter 3, subchapter I, article 2-B;
- B. Comprehensive planning and land use under Part 2, Subpart VI-A;
- C. Internal plumbing under chapter 185, subchapter III;
- D. Subsurface wastewater disposal under chapter 185, subchapter III; and
- E. Building standards under chapter 141; chapter 185, subchapter I; and Title 25, chapters 313 and 331.

3. Training and certification of code enforcement officers. In cooperation with the Maine Technical College System, the Department of Environmental Protection and the Department of Human Services, the office shall establish a continuing education program for individuals engaged in code enforcement. This program must provide basic and advanced training in the technical and legal aspects of code enforcement necessary for certification.

4. Examination. The office shall conduct at least one examination each year to examine candidates for certification at a time and place designated by it. The office may conduct additional examinations to carry out the purposes of this subchapter.

5. Certification standards. The office shall establish by rule the qualifications, conditions and licensing standards and procedures for the certification and recertification of individuals as code enforcement officers. A code enforcement officer need only be certified in the areas of actual job responsibilities. The rules established under this subsection must identify standards for each of the areas of training under subsection 2-A, in addition to general standards that apply to all code enforcement officers.

6. Certification; terms; revocation. The office shall certify individuals as to their competency to successfully enforce ordinances and other land use regulations and permits granted under those ordinances and regulations and shall issue certificates attesting to the competency of those individuals to act as code enforcement officers. Certificates are valid for 5 years unless revoked by the District Court. An examination is not required for recertification of code enforcement officers. The office shall recertify a code enforcement officer if the code enforcement officer successfully completes at least 12 hours of approved training in each area of job responsibility during the 5-year certification period.

- A. The District Court may revoke the certificate of a code enforcement officer, in accordance with Title 4, chapter 5, when it finds that:

- (1) The code enforcement officer has practiced fraud or deception;

(2) Reasonable care, judgment or the application of a duly trained and knowledgeable code enforcement officer's ability was not used in the performance of the duties of the office; or

(3) The code enforcement officer is incompetent or unable to perform properly the duties of the office.

B. Code enforcement officers whose certificates are invalidated under this subsection may be issued new certificates provided that they are newly certified as provided in this section.

7. Other professions unaffected. This subchapter may not be construed to affect or prevent the practice of any other profession.

MOTION TO RECONSIDER TOLLS APPEAL PERIOD

Attention all boards of appeals and parties to local appeals: A motion to reconsider a decision “tolls” (suspends) the 45-day appeal period to Superior Court until reconsideration is completed. So held the Penobscot County Superior Court, which was affirmed by the Maine Supreme Court in a memorandum decision in *Carmel v. City of Old Town*, No. Mem 01-82 (Me. Oct. 3, 2001). (Memorandum decisions are unpublished and technically have no precedential value; they may, however, foreshadow how the Law Court would rule in a future case.)

This somewhat surprising holding came in a case in which the Board of Appeals issued its original decision on February 22, 2000. On March 1, there was a motion to reconsider. On March 21, within the 30 days authorized by 30-A M.R.S.A. § 2691(3)(F) for reconsideration of appeals board decisions, the Board reconsidered and denied the appeal again. On April 14, some 52 days after the original decision, the appellant filed his Rule 80B appeal to Superior Court.

The City argued the appeal was untimely. The Superior Court held, however, that the 45-day appeal period was tolled for the 21 days during which the motion to reconsider was pending. (Thus, the April 14th Superior Court appeal was filed with two weeks to spare.) The Law Court said the Superior Court had applied these time periods “appropriately.”

If the Superior Court’s reading of the appeals board reconsideration statute is correct, then the same holding would apply to boards of assessment review, which are governed by the same statute (see 30-A M.R.S.A. § 2526(6)(G)). Additionally, note that the same rule already has been applied to planning boards if they have officially adopted reconsideration procedures (see *Cardinali v. Town of Berwick*, 550 A.2d 921 (Me. 1988)). If planning boards have no such official procedures, they still have a right to reconsider (see *Jackson v. Town of Kennebunk*, 530 A.2d 717 (Me. 1987)), but reconsideration does not toll the appeal period. (By R.P.F)